Summary of the Protect and Grow American Jobs Act As Passed by Judiciary

Updates and Strengthens Requirements for H-1Bs Exempt from the Recruitment Attestation. The legislation revises the definition of an "exempt H-1B nonimmigrant." It replaces the exemption for H-1B workers with advanced degrees and the $60,000 exemption wage level in favor of a new formula—the lesser of $135,000 or the mean wage for the occupational classification in the area of employment (but in no event less than $90,000). It would also require that the relevant dollar amounts in this formula be increased based on the Consumer Price Index.

Improves protections related to not laying off/displacing existing employees in favor of an H-1B. Current law requires certain H-1B employers to attest that they will not displace a U.S. worker within the 90 days prior to the filing of the H-1B petition and the 90 days after such filing. The new legislation extends this provision to cover the entire period of H-1B employment.

Strengthens displacement protections for workers placed at third-party cites to reign in H-1B gamesmanship. Similar to above, current law requires certain H-1B employers that *place* H-1B workers with third-party employers to attest that the third-party employer does not intend to displace a U.S. worker within the 90 days prior to the filing of the H-1B petition and the 90 days after such filing. The amendment extends this provision to cover the entire period in which the H-1B worker is placed with the third-party employer.

Holds Third-Party Employers Accountable. The attestation is further amended to require the H-1B employer to obtain certain written assurances from the third-party employer, including that the third-party employer: (1) does not intend to displace a U.S. worker during the covered period, (2) will inform the H-1B employer if a U.S. worker is displaced, and (3) agrees to provide reasonable information to the Department of Labor during any investigation of the H-1B employer. In the case of a displacement by the third-party employer, the attestation further requires the H-1B employer to: (1) inform the Secretary of Homeland Security of such displacement; (2) cease the placement of relevant H-1B employees with the third-party employer; and (3) cease the performance of relevant services for the benefit of the third party employers. Additionally, the legislation make these attestations required of all H-1B dependent employers, regardless of the wages paid to its H-1B employees.

Requires the Recruitment of United States Workers. The legislation amends the recruitment attestation, which currently requires certain H-1B employers to attest that they have taken good faith steps to recruit U.S. workers and offered the job to any U.S. worker who applies and is equally or better qualified for the job. This provision is amended so that any H-1B employer required to submit this attestation would also be required to submit a recruitment report summarizing the good faith steps taken to recruit U.S. workers; the number of U.S. workers who applied for the job; the number of such workers who were offered the job and, if so, whether the workers accepted the offer; and for each worker who was not offered the job, the reason why the job was not offered.

Requires H-1B Dependent Employers Placing Employees at Third-Party Employers to Pay at least the Mean Wage. The legislation amends the wage requirements, which currently requires H-1B employers to pay an H-1B worker the higher of the prevailing wage in the occupational classification or the actual wage paid by the employer to its other workers in that occupation. The amendment would add a new provision affecting the wages paid by H-1B dependent employers to H-1B workers that will be placed with third-party employers. Where such placements will take place, an H-1B dependent employer would now be required to pay at least the average (mean) wage paid to other workers in the same occupational classification in the same area of employment.

Authorizes DOL to Conduct Periodic Investigations. The legislation authorizes the Department of Labor to conduct periodic investigations of H-1B dependent employers, and requires the Department of Labor to audit at least five percent of such employers annually. It also ensures that current H-1B penalties, including fines and debarment from the H-1B program, can be levied against any H-1B dependent employer that violates the new non-displacement attestations provided by the bill. To fund these investigation, the legislation authorizes the Department of Homeland Security to impose a new $495 fee on H-1B dependent employers to ensure effective enforcement of such employers.

More Appropriately Defines H-1B Dependent Employers. The legislation amends the definition of "H-1B dependent employer" at section 212(n)(3)(A) of the INA with respect to employers that have more than 50 full-time equivalent employees. Such employers would now be considered H-1B dependent if at least 20% of their workforce (rather than the current 15%) are H-1B workers.

Requires the Secretaries of Labor and Homeland Security to annually publish a report on use of the H-1B program by H-1B dependent employers. Such reports shall include information on: (1) each H-1B dependent employer that filed a labor condition application for H-1B workers; (2) the occupational classifications and required wages listed in such applications; (3) the worksites at which the H-1B workers sought in such applications were to be employed or placed; (4) investigations related to H-1B dependent employers and the outcomes of such investigations.